

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

JOHNSON CRUSHING, INC.
Employer-Petitioner

and

Case 18-RM-1382

INTERNATIONAL UNION OF
OPERATING ENGINEERS, LOCAL 139
Union

ORDER

The Employer-Petitioner's Request for Review of the Acting Regional Director's administrative dismissal of the petition is denied as it raises no substantial issues warranting review.

MARK GASTON PEARCE, CHAIRMAN

KENT Y. HIROZAWA, MEMBER

Member Miscimarra, dissenting:

I would grant review as to whether the Union actually possessed the majority support of the unit employees at the time the Employer allegedly granted it majority recognition. I agree with the United States Court of Appeals for the District of Columbia Circuit's decision in *Nova Plumbing, Inc. v. NLRB*, 330 F.3d 531 (2003) that the Board's test in *Staunton Fuel*, 335 NLRB 717 (2001), is incorrect and should be reversed. Additionally, I find that the Employer should be given an opportunity to show, as it asserts, that the 2005 memorandum of agreement is a forgery.

PHILIP A. MISCIMARRA, MEMBER

Dated, Washington, D.C., June 8, 2015